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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

MASTER FILE NO. 4:07-cv-5944-JST
Case No. 4:17-cv-04067-JST

MDL NO. 1917

This Document Relates to:

Luscher, et al. v. Mitsubishi Electric Corp.,
No. 4:17-cv-04067-JST

**INDIRECT PURCHASER PLAINTIFFS'
NOTICE OF MOTION AND MOTION
FOR ORDER AUTHORIZING
DISTRIBUTION OF SETTLEMENT
FUNDS; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: September 26, 2024
Time: 2:00 p.m.
Courtroom: 6, 2nd Floor
Judge: Hon. Jon S. Tigar

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 26, 2024, at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Jon S. Tigar, United States District Judge, Oakland Courthouse, located at 1301 Clay Street, Courtroom 6, 2nd Floor, Oakland, California, the Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move the Court for an Order authorizing the distribution of settlement proceeds to class members who submitted valid claims.

IPPs request that the Court enter an Order approving the distribution of settlement funds in accordance with the Plan of Distribution previously approved by the Court (ECF No. 6335) to members of the Indirect Purchaser Class whose claims have been approved by the Court-appointed Settlement Administrator, The Notice Company. In addition, IPPs seek an Order: (1) authorizing payment to the Settlement Administrator for unreimbursed costs and expenses; and (2) releasing the 10% remainder of attorney’s fees previously withheld by the Court.

This Motion is based on this Notice of Motion, the following Memorandum of Points and Authorities in support thereof, the accompanying Declaration of Joseph M. Fisher, the pleadings and papers on file in this action and such other matters as may be presented to the Court at or prior to the hearing on the Motion.

Dated: July 19, 2024

s/ Mario N. Alioto

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether to authorize payment of all claims as approved by the Settlement Administrator from the Net Settlement Fund according to the weighted pro rata Plan of Distribution approved by the Court and set forth in Exhibit B to the Fisher Declaration.

2. Whether to adopt and approve IPPs Lead Counsel's recommendation that the Court pay "Late Claims" to the extent, and in the manner, set forth herein.

3. Whether to authorize the payment to the Settlement Administrator of fees, costs, and expenses incurred, but as yet unpaid, in the amount of \$668,022.

4. Whether to authorize reserving \$345,475 for future payment to the Settlement Administrator and accountants for projected future fees and expenses.

5. Whether to release the 10% remainder of attorney's fees previously withheld by the court pursuant to its November 6, 2023 Order Granting in Part Motion for Attorney's Fees, Expenses, and Incentive Awards for Class Representatives (ECF No. 6337).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs (“IPPs”) have settled this action with Defendant Mitsubishi Electric Corporation (“Mitsubishi Electric”), resulting in a settlement totaling \$33,000,000. The Court’s Order granting final approval to IPPs’ settlement with Mitsubishi Electric and entering its Final Judgment was entered on November 6, 2023 (ECF No. 6335).

As explained below and in the Declaration of Joseph M. Fisher (the “Fisher Decl.”), filed herewith, all the prerequisites to a prompt distribution of funds to claimants have been satisfied. The funds to be distributed are already in hand, having been deposited in escrow by Mitsubishi Electric. The Court has adopted a Plan of Distribution that governs the distribution of funds. ECF No. 6335 ¶ 5. Class member participation in the claims process has been robust. The Notice Company, the Court-appointed Settlement Administrator for the indirect purchaser settlement, has processed and approved a total of 252,015 Timely Claims (defined herein) accounting for 107,616,288 CRT Weighted Units consisting of the following: (i) 134,006 previously-submitted claims representing 71,657,744 CRT Weighted Units, (ii) 3,367 newly-submitted claims consisting of updates to previously-submitted claims accounting for 11,404,483 CRT Weighted Units, and (iii) 114,642 claims from new claimants accounting for 24,554,061 CRT Weighted Units. Fisher Decl. ¶ 9.

IPPs request that the Court enter the Proposed Order submitted herewith, which authorizes payment of all approved claims from the Net Settlement Fund according to the weighted pro rata Plan of Distribution previously approved by the Court. The Proposed Order also incorporates IPPs’ proposal that the Court approve payments to late claimants (who filed their claims after the Court-ordered deadline, but before September 13, 2023 (three months after the Court-ordered deadline)) in the same amount they would have received had they timely filed their claims.

In conjunction with the distribution of funds, IPPs further request that the Court: (1) authorize payment to the Settlement Administrator for unreimbursed fees and expenses; (2) approve the hold back of \$345,475 for future fees and expenses; and (3) release the 10% remainder of

attorney's fees previously withheld by the Court.

II. STATEMENT OF RELEVANT FACTS

A. The Settlement and Settlement Approval

The Settlement Fund was created as a result of IPPs' settlement with Mitsubishi Electric, which the Court approved and entered its Final Judgment on November 6, 2023 (ECF No. 6335).

B. Notice to Class Members Regarding the Settlement and Filing Claims

Dissemination of notice to the Settlement Class began in February 2023, affording Class Members the opportunity to submit claims and to object to or request exclusion from the settlement. ECF No. 6192-2 ¶¶ 6, 9 (Declaration of Joseph M. Fisher re: Mitsubishi Electric Notice Program and Claims Administration).

Print notices appeared in *People Magazine*, *Us Weekly*, and *Readers Digest*; press releases in English and Spanish were distributed through *PR Newswire* and were picked up and posted/published by 457 media outlets; notices were posted online in both English and Spanish at www.CRTclaims.com resulting in approximately 5.4 million page views; notice was disseminated via paid digital media through *Google Display Network*, *Yahoo!*, *Facebook*, *YouTube*, *LinkedIn*, and *AARP* as well as search ads on *Google.com*; notice was disseminated through the digital newsletter publications of *Dotdash Meredith* (magazine titles include *Better Homes & Gardens* and *Southern Living*), *Golf Magazine*, and *Kiplinger*; and notice via television ads was circulated on cable TV networks including MSNBC, Hallmark, The Weather Channel, COMET, and The Action Channel, among others. *Id.* ¶¶ 6-15.

In addition to the digital and print media program, notice was sent by email or first-class mail to representatives from third-party claim submission companies or law firms that had contacted the Settlement Administrator in connection with the Prior Settlements;¹ to persons and

¹ "Prior Settlements" refer to the previous nine settlements reached with Defendants Chunghwa, LG, Philips, Panasonic, Hitachi, Toshiba, Samsung SDI, Thomson, and Technologies Displays America. *See* Detailed Notice of Settlement (ECF No. 6104-1).

1 businesses who submitted indirect purchaser claims in the Prior Settlements; to every Fortune 500
 2 Company for each of the class years (1995 to 2007); to the largest private colleges, universities
 3 and private secondary schools in the United States; and to the 48 largest hospitals in the United
 4 States. Further, approximately 12.9 million notices were delivered by email to consumers and
 5 small businesses selected based on demographic characteristics consistent with the Class
 6 definition. All notices identified the Court-approved deadline of June 13, 2023, for the submission
 7 of claims. ECF No. 6192-2 ¶¶ 16-19.

8 As part of the notice program described above, The Notice Company established and
 9 maintained a dedicated website, toll-free phone line, and Post Office address where potential Class
 10 Members could access or request additional documents and information relating to the settlement,
 11 including copies of the notices, claim forms, and other Court documents. *Id.* ¶¶ 6-8, 21-24.

12 The Court’s Order of Final Approval filed November 6, 2023, recognized that “[t]he notice
 13 given to the Class . . . was the best notice practicable under the circumstances. Said notice . . . fully
 14 satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of
 15 due process, and all applicable state laws.” ECF No. 6335 ¶ 8.

16 C. The Plan of Distribution

17 The Court-approved Plan of Distribution uses “the same weighted pro-rata plan of
 18 distribution that this Court has approved for the prior settlements in this case.” *Id.* ¶ 3(d).
 19 Settlement Class members who filed valid claims are eligible to receive their pro rata share of the
 20 net Mitsubishi Electric settlement fund based on the total number of valid claims filed, and the
 21 number and type of CRT Products each claimant purchased.² Class members who filed valid
 22 claims against the Prior Settlements will automatically receive their pro-rata share of the

23
 24 ² Claims for Standard CRT Televisions (televisions with a screen size of less than 30 inches) will
 25 receive a weight of 1; Large CRT Televisions (televisions with a screen size of 30 inches or
 26 larger) will receive a weight of 4.3; and CRT Computer Monitors will receive a weight of 3. *See In*
 27 *re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 07-cv-5944-JST, 2016 WL 3648478, at *18
 (N.D. Cal. July 7, 2016).

Mitsubishi Electric settlement without having to re-file their claim.³ All other class members who submit valid claim forms will be entitled to recover.

D. Claims Administration

1. Summary of Settlement Administrators' Receipt and Review of Claims

The Settlement Administrator received a total of 3,087,094 claims through June 13, 2023. Fisher Decl. ¶ 9. The Settlement Administrator conducted an extensive review and audit of those claims. *Id.* ¶¶ 7-22. As a result of that process, the Settlement Administrator is recommending acceptance of 252,015 Timely Claims accounting for 107,616,288 CRT Weighted Units consisting of the following: (i) 134,006 previously-submitted claims representing 71,657,744 CRT Weighted Units, (ii) 3,367 newly-submitted claims consisting of updates to previously-submitted claims accounting for 11,404,483 CRT Weighted Units, and (iii) 114,642 claims from new claimants accounting for 24,554,061 CRT Weighted Units. *Id.* ¶ 9.

Timely Claims consisted of: (i) eligible End-User claimants from the Prior Settlements that were automatically entered into the Mitsubishi Electric settlement; and (ii) newly-submitted claims that were submitted or postmarked by June 13, 2023. Claims were submitted either directly by the claimant ("non-represented claimant") or by a third-party representative, attorney, or agent ("Claims Aggregator") on behalf of a claimant ("represented claimant"). *Id.*

As described in the Detailed Notice of Settlement and Summary Notice of Settlement (ECF No. 6195), all eligible End-User claimants from the Prior Settlements were automatically entered into the Mitsubishi Electric settlement. There were 137,373 End-User claims that were initially entered into the Mitsubishi Electric settlement accounting for 83,062,227 CRT Weighted Units. These claims consisted of 83,278 non-represented prior claims accounting for 5,456,352 CRT Weighted Units and 54,095 represented prior claims accounting for 77,605,875 CRT

³ All claims processed and approved as part of the Prior Settlements, including late claims, will be considered valid, timely claims for the Mitsubishi Electric settlement and therefore, eligible to automatically receive a full pro-rata share of the Mitsubishi Electric settlement without having to re-file their claim.

1 Weighted Units. Updated claims were submitted by 3,114 non-represented claimants totaling
 2 126,521 CRT Weighted Units and 253 represented claimants totaling 11,277,962 CRT Weighted
 3 Units. These updated claims were treated as newly-submitted claims and are reported below. The
 4 final number of previously-submitted claims entered into the Mitsubishi Electric settlement,
 5 excluding updated claims as described above, was 134,006 representing 71,657,744 CRT
 6 Weighted Units. Fisher Decl. ¶ 9(A).

7 The Settlement Administrator received a total of 2,953,088 newly-submitted Timely
 8 Claims through June 13, 2023, including 3,367 claims that were updates of previously-submitted
 9 claims and 2,949,721 claims from new claimants. Claims from new claimants consisted of 485
 10 claims that were submitted as paper claims with a timely postmark, and 2,949,236 claims
 11 submitted online. New non-represented claimants submitted 111,564 Timely Claims with CRT
 12 Weighted Units claimed totaling 10,866,383. New represented claimants submitted 3,078 Timely
 13 Claims with CRT Weighted Units claimed totaling 13,687,678. *Id.* ¶ 9(B).

14 In total, there were 3,087,094 Timely Claims received representing 289,218,810 CRT
 15 Weighted Units. *Id.* ¶ 9. As discussed further herein, the Settlement Administrator conducted an
 16 extensive review and audit process to verify these claims.

17 After the June 13, 2023 Court-approved deadline for the submission of Timely Claims, the
 18 Settlement Administrator discontinued the online process for submitting claims but continued to
 19 receive Late Claims by mail. The Settlement Administrator received 18 Late Claims for 56,160
 20 CRT Products representing 167,455 CRT Weighted Units. *Id.* ¶ 10, Ex. A. A total of 15 Late
 21 Claims were postmarked within 16 days of the claims deadline. The latest of the Late Claims was
 22 postmarked September 5, 2023, less than three months after the claims deadline. *Id.* ¶ 10.

23 The Settlement Administrator reviewed each Claim form received for compliance with the
 24 settlement's requirements. Some claims were found to be deficient or incomplete. Among the
 25 various types of deficiencies found were the following:

- 26 • claims submitted by a Claims Aggregator who failed to provide purchase quantities

1 for CRT Products on the Claim Form or only partially completed this information
2 so that the Claim Form showed “N/A” or “TBD” or “0” or was blank or some
3 combination thereof (referred to as “Placeholder Claims”);

- 4 • non-represented claimants who submitted incomplete claim forms, including
5 missing name and/or contact information, missing claim eligibility information,
6 missing purchase quantities, or failure to sign the Proof of Claim form;
- 7 • claims for ineligible purchases, such as purchases of CRT Products made directly
8 from any of the Defendants, purchases of non-CRT Products, purchases of Sony-
9 branded products, purchases made outside of the Class Period, purchases made
10 outside of the United States, purchases made in a state that is not one of the 30
11 eligible states under the settlement or the District of Columbia, or multi-state
12 purchases where central purchasing of all CRT Products in one of the eligible states
13 was asserted but not properly documented;
- 14 • claims submitted by a Claims Aggregator on behalf of a claimant without an
15 agreement demonstrating the authority of the Claims Aggregator to act as the
16 claimant’s agent or representative;
- 17 • duplicate claims submitted by the same corporate claimant; for example, a parent
18 corporation submitting a claim that was inclusive of the CRT purchases of a
19 subsidiary, where the subsidiary had already submitted its own claim for those
20 purchases;
- 21 • duplicate claims submitted by the same individuals, where all identifying
22 information available (name, address, phone and/or email) are the same, that
23 appeared to represent duplicate purchases of CRT Products;
- 24 • duplicate claims submitted by the same entity or individual that filed in the Prior
25 Settlement. As noted above, all eligible End-User claimants from the Prior
26 Settlements were automatically entered into the Mitsubishi Electric settlement. The

Settlement Administrator sent direct notice to these claimants and informed them of their previously-approved quantities. If a claimant had additional units to add to their claim, they were instructed to submit a new claim with a full report of all units claimed for the New Settlement. The Settlement Administrator identified claimants from the Prior Settlement who submitted claims in the New Settlement. Each of those claims from the Prior Settlement was flagged as a duplicate claim and the newly-submitted claim was given priority;

- “Competing Claims” submitted by Claims Aggregators, where more than one Claims Aggregator each submitted a claim on behalf of the same claimant;
- potentially invalid claims that appear to have been programmatically generated and submitted by computer-created “bots” (short for robots) or by other scam-generating sources and not by legitimate claimants (collectively “bot-scam” claims).

Id. ¶ 11. A detailed description of the Settlement Administrator’s procedures for addressing these different categories of deficient claims is set forth in the Fisher Declaration. *Id.* ¶¶ 12-16.

2. The Settlement Administrator’s Audit Criteria and Results

All claims were subject to review and/or audit by the Settlement Administrator. For claims submitted directly by Class Members, the Settlement Administrator set an audit threshold at purchases of 120 CRT Products for individual claims, 100 CRT Products for small businesses, 250 CRT Products for medium businesses, and 1,000 CRT Products for large businesses, where business size was based on the number of employees as reported by the claimant. Where business size could not be determined, the audit threshold was set at the purchase of 50 CRT Products. Claimants were selected and placed into an audit pool consisting of 760 individuals and 55 businesses. For claims submitted by Claims Aggregators, the Settlement Administrator began by auditing large claims consisting of the top 5% of claims submitted by each Claims Aggregator. The Settlement Administrator also selected additional claims for audit based on comparisons of

1 claim submissions by comparable companies. *Id.* ¶ 18.

2 Considering all newly-submitted claims, including claims that were updates of previously-
3 submitted claims, reviews and audits were performed on claims that accounted for over 90% of
4 claimed CRT Weighted Units. The audit process involved reviewing voluminous purchase data
5 and multiple sources of documentation for numerous claims, including when appropriate vetting
6 through publicly-available records and other third-party data sources. The Settlement
7 Administrator reviewed and evaluated the claimed purchases of CRT Products by performing
8 direct audits and, in appropriate cases, working with Claim Aggregators to confirm their
9 adherence to the Settlement Administrator's reporting requirements. *Id.* ¶ 19.

10 Audit notices were sent to all audited claims, providing instructions to claimants or their
11 representatives on how to respond to the audit and the deadline for responses. The audit notices
12 informed the claimant that if no response was received, then claimed purchases of numerous CRT
13 Products would be reduced to a claim for a \$10 minimum payment. When the Settlement
14 Administrator received responses with sufficient support for the originally claimed units, or for
15 revised purchase quantities submitted by the claimant or its authorized representative, the claims
16 were accepted or revised, and the audit was closed. For those audits where questions remained
17 after audit responses were received and more information was required, the Settlement
18 Administrator pursued follow-up communications until the audit was resolved with the claimant.
19 *Id.* ¶ 20.

20 The detailed results of the Settlement Administrator's audit, by category of claim, are set
21 forth in the Fisher Declaration filed herewith. *Id.* ¶¶ 21-22.

22 **3. Proposal for Payment of Late Claims**

23 Lead Counsel and the Settlement Administrator have devised a fair and balanced proposal
24 for the payment of Late Claims. Lead Counsel and the Settlement Administrator recommend that
25 the Court adopt the following approach:

- 26 • Late Claims submitted within three months of the claims deadline will be treated

and paid equivalently to Timely Claims.⁴

- Late Claims submitted later than three months after the claims deadline will not be processed or paid.

Fisher Decl. ¶ 28.

E. The Net Settlement Fund Available for Distribution

1. The Amount Available for Distribution

Mitsubishi paid a total of \$33,000,000 in settlement of this case. There have been a series of deductions from this amount for Court approved attorney's fees, expenses, and incentive awards paid to the class representatives. *See, e.g.,* Order Awarding Attorney's Fees, Expenses, and Incentive Awards for Class Representatives (ECF No. 6337). Interest has also accrued on the settlement funds and taxes have been paid. The projected balance of these monies is \$25,415,892.

Fisher Decl. ¶ 23.

2. Amounts Owed to the Settlement Administrator and Projected Future Expenses

The Settlement Administrator has unpaid invoices for claims administration through June 2024 in the amount of \$608,522. In addition, the Settlement Administrator incurred fees and costs of \$59,500 to implement the bot-scam verification process as authorized by the Court. Fisher Decl. ¶ 24. The Settlement Administrator's costs and fees incurred through June 2024 total \$668,022.

Ongoing costs, not yet incurred, include projected administrative costs of \$330,475 and accounting fees of \$15,000. *Id.* ¶ 25. Total costs and fees of claims administration not yet incurred are projected to sum to \$345,475.

Class Counsel has reviewed these claims administration expenses and has determined them to be reasonable and necessary for the claims administration in this case. By this motion, IPPs Counsel seeks authorization to: (i) pay the amount of costs and fees incurred through June 2024

⁴ The last Late Claim was postmarked September 5, 2023, which is less than three months from the claims deadline. *See* Fisher Decl. ¶¶ 10, 28, Ex. A.

1 from the Net Settlement Fund, as further detailed below, and (ii) reserve \$345,475 for payment of
 2 ongoing costs, not yet incurred.

3 **F. Distribution of the Net Settlement Fund**

4 The distribution formula requires a weighted *pro rata* distribution to all members of the 30
 5 eligible states and the District of Columbia Classes that filed valid claims, subject to a minimum
 6 payment of \$10 per claimant and a maximum payment of three times the estimated money
 7 damages per claimant. The minimum payment will be achieved by first calculating payments by
 8 allocating funds based on each claimant's CRT Weighted Units, identifying those claims that
 9 would receive less than \$10, and then going through a process of recalculating payments so that all
 10 claims are grossed up to a \$10 minimum payment. Payments will be issued by check or
 11 electronically. *Id.* ¶ 27.

12 The Settlement Administrator has already determined the approved CRT Weighted Units
 13 for each claim. *Id.* ¶ 29, Ex. B. The Settlement Administrator has also calculated the approximate
 14 settlement value of a single CRT Weighted Unit (approximately \$0.20 subject to a \$10 minimum
 15 payment per claimant). *Id.* ¶ 29.

16 **III. ARGUMENT**

17 IPPs request an Order authorizing the distribution of the Net Settlement Fund to the
 18 approved claimants based on the approved CRT Weighted Units set forth in Exhibit B to the
 19 Fisher Declaration. Entry of an Order permitting a distribution of the Net Settlement Fund to all
 20 approved claimants is proper and appropriate at this time because final judgment has been entered.
 21 *See* 4 William B. Rubenstein, *Newberg on Class Actions*, § 12:19 (5th ed.) (Westlaw 2018). As set
 22 forth above, the Court has approved the Plan of Distribution that allocates the Net Settlement Fund
 23 on a weighted pro rata basis based on each claimant's approved CRT Weighted Units as a
 24 percentage of the total CRT Weighted Units claimed. Distribution of the Net Settlement Fund, as
 25 set forth in Exhibit B to the Fisher Declaration, will give effect to the Court-approved pro rata
 26 Plan of Distribution, which compensates class members based on the extent of their injuries. *See*

1 *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 332 (N.D. Cal. 2018) (“A plan of
 2 allocation that reimburses class members based on the type and extent of their injuries is generally
 3 reasonable.” (citation omitted)).

4 **A. The Court Should Approve the Settlement Administrator’s Recommendations**
 5 **Regarding Acceptance and Rejection of Claims**

6 The Court should adopt the Settlement Administrator’s recommendations regarding the
 7 acceptance or rejection of claims submitted on or before the applicable Claims Deadline. As set
 8 forth above, the Settlement Administrator has conducted a thorough review of claims. Fisher Decl.
 9 ¶¶ 11-16. Where it found claims that were incomplete or deficient, it gave the claimants a fair
 10 opportunity to correct or supplement them. *Id.* ¶¶ 12-16. Furthermore, its review of claims
 11 included an audit to confirm the eligibility of purchases. *Id.* ¶¶ 18-22. The Settlement
 12 Administrator processed late claims. *Id.* ¶ 10. Additionally, where possible, the Settlement
 13 Administrator used publicly available data to help audit certain claims. *Id.* ¶ 19. Based on this
 14 process, the Settlement Administrator has determined that there are 252,015 Timely Claims that
 15 merit acceptance and payment. *Id.* ¶ 9, Ex. B.

16 A class action settlement administrator’s decision regarding class members’ eligibility to
 17 participate in a distribution of settlement funds merits deference from the Court. *In re Int’l Air*
 18 *Transp. Surcharge Antitrust Litig.*, No. M 06-01793, 2011 WL 6337625, at *2 (N.D. Cal. Dec. 19,
 19 2011), *aff’d*, 577 F. App’x 711 (9th Cir. 2014) (“The Settlement Administrator, who was involved
 20 in the mediation and negotiation of the settlement agreements, and has been administering the
 21 funds for three years, has direct and extensive knowledge of this case. . . . Thus, the Court must
 22 give some deference to his recommendation as to factual matters.”).

23 **B. The Court Should Adopt the Settlement Administrator’s and Lead Counsel’s**
 24 **Recommendation Regarding Late Claims**

25 There are 18 Late Claims in this case. Lead Counsel’s recommended approach—under
 26 which Late Claims submitted within three months of the claims deadline will be treated and paid
 27 equivalently to Timely Claims, and Late Claims submitted thereafter will not be processed or

1 paid—is fair and reasonable. Lead Counsel’s approach is designed to avoid the delay and expense
 2 of continuing litigation over Late Claims and to compensate all claimants.

3 “Settlement administration in a complex class action often requires courts to use their
 4 equitable powers under Rule 23 to manage the disparate interests competing over a finite pool of
 5 assets with which to satisfy the class. . . . A primary use of these equitable powers is balancing the
 6 goals of expedient settlement distribution and the consideration due to late-arriving class
 7 members. . . . Integral to this balancing, however, is the court’s responsibility and inherent power
 8 and duty to protect unnamed, but interested persons.” *In re Orthopedic Bone Screw Prods. Liab.*
 9 *Litig.*, 246 F.3d 315, 321 (3d Cir. 2001) (internal quotation marks and citations omitted).

10 Ultimately, “[t]he goal of any distribution method is to get as much of the available damages
 11 remedy to class members as possible and in as simple and expedient a manner as possible.” 4
 12 William B. Rubenstein, *Newberg on Class Actions*, § 12:15 (5th ed.) (Westlaw 2018).

13 The Court has discretion to allow claims submitted after its Claims Deadline. *In re Gypsum*
 14 *Antitrust Cases*, 565 F.2d 1123, 1128 (9th Cir. 1977). Judicial discretion in that regard flows from
 15 the court’s traditional equity powers to protect interested parties and class members. *Welch &*
 16 *Forbes, Inc. v. Cendant Corp. (In re Cendant Corp. Prides Litig.)*, 233 F.3d 188, 194-97 (3d Cir.
 17 2000) (quoting *Zients v. LaMorte*, 459 F.2d 628, 630 (2d Cir.1972)) (“‘Until the fund created by
 18 the settlement is actually distributed, the court retains its traditional equity powers ... to protect
 19 unnamed, but interested persons.’ [] A Court may assert this power to allow late-filed proofs of
 20 claim and late-cured proofs of claim.”). In the exercise of that discretion, courts have allowed late
 21 claims in some circumstances and denied them in others. *See, e.g., In re Valdez*, 289 F. App’x 204,
 22 206 (9th Cir. 2008). In many cases, courts approve the full payment of late claims.⁵

23 _____
 24 ⁵ *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-MD-01827, ECF Nos. 9217, 9273
 25 (N.D. Cal. 2014) (approving class counsel’s recommendation to pay late claims submitted over 18
 26 months after the deadline the same as timely claims); *In re Dynamic Random Access Memory*
 27 *(DRAM) Antitrust Litig.*, No. 02-MD-1486, ECF Nos. 2273, 2283 (N.D. Cal. 2016) (class counsel
 recommended and the court approved the payment of late claims filed up to approximately one
 year after the deadline be paid in full).

1 Lead Counsel submits that paying Late Claims filed through September 13, 2023
 2 equivalently with Timely Claims, while denying claims filed after that date, strikes the proper
 3 balance. It gives late claimants sufficient compensation for their injuries, limits the dilution to
 4 Timely Claims, and avoids further litigation. IPPs submit that this proposal is reasonable and urge
 5 the Court to adopt it.

6 **C. The Court Should Authorize Payment of the Settlement Administrator's**
 7 **Unpaid Fees and Expenses and Authorize the Reserve for Future Expenses**

8 The Settlement Administrator has provided Lead Counsel with invoices detailing the
 9 additional \$668,022 in fees and expenses it has incurred through June 2024 to administer and audit
 10 claims submitted by the Class Members, prepare for the filing of this motion, and prepare to
 11 distribute the settlement funds to Class Members. Fisher Decl. ¶ 24. Class Counsel has reviewed
 12 these invoices. Lead Counsel also has first-hand knowledge of the work performed by the
 13 Settlement Administrator. Based on this, Lead Counsel recommends that the Court approve the
 14 payment of the Settlement Administrator's unpaid fees and expenses as fair, reasonable and
 15 necessary for the administration of claims in this complex case.

16 Additionally, the Settlement Administrator projects that it will incur further administrative
 17 costs and accounting fees totaling \$345,475. *Id.* ¶ 25. Lead Counsel recommends that the Court
 18 reserve this amount for future payment as fair, reasonable and necessary for the administration of
 19 claims in this complex case.

20 The Settlement Administrator's work in this case has required a high level of skill,
 21 dedication, and effort. The Settlement Administrator had to process and track over 2,900,000
 22 claims, over 450 of which were filed in paper form and had to be manually entered in a database.
 23 Fisher Decl. ¶ 9(B). In addition, the Settlement Administrator audited over 90% of claimed CRT
 24 Weighted Units, some requiring the review of voluminous purchase data and multiple sources of
 25 documentation for numerous claims, including when appropriate vetting through publicly-
 26 available records and other third-party data sources. *Id.* ¶ 19.

27 Furthermore, factual issues arose with regard to certain claims. For example, some

1 claimants sought to recover for purchases of CRT Products in states that were not included in the
2 settlement class, or for foreign purchases of CRT Products, by asserting that their company
3 purchased from a central office in one of the 30 eligible states or the District of Columbia. Such
4 claims required the Settlement Administrator to investigate and procure data regarding the types
5 and frequency of CRT Product purchases by certain types of business during the Class Period. In
6 addition, they required investigation as to whether the claimant did, in fact, purchase their CRT
7 Products from a central office located in one of the 30 States or the District of Columbia. *Id.* ¶ 16.
8 This involved numerous communications with the claimant or its representative to substantiate
9 their claims. *Id.*

10 Additionally, the Settlement Administrator identified 2,793,839 online claim submissions
11 that appeared to be bot-scam claims and not submitted by legitimate claimants. A motion for
12 approval of procedures and costs for processing bot-scam claims was submitted to the Court
13 outlining the detailed procedures associated with handling the large number of bot-submitted
14 claims (ECF No. 6365). The Settlement Administrator implemented the plan for claim verification
15 as outlined and approved by the Court (ECF No. 6367). The Settlement Administrator worked
16 with the selected third-party vendor to conduct a detailed email address verification analysis. In
17 accordance with the claim verification notice instructions sent in response to these online
18 submissions, the claims of the 1,665,742 claimants who did not respond or did not provide
19 verification documentation were deemed deficient and ineligible for payment. In order to
20 determine the authenticity of those claimants who did respond, the Settlement Administrator
21 reviewed a combination of criteria associated with identifying ineligible claims. *Id.* ¶ 14.

22 In sum, the Settlement Administrator substantially increased eligible claimants' pro rata
23 recoveries by investigating and reducing inflated claims. The Settlement Administrator should be
24 appropriately compensated for this work. IPPs request that the Court authorize the payment of
25 \$668,022, and reserve \$345,475 for future payment.

D. The Court Should Adopt the Settlement Administrator's Proposal for Distribution of Residual Funds

The Settlement Administrator contemplates that some claimant checks may not be cashed and that some electronic payments to claimants may not be received. In that case, there will be monies remaining in the fund. The Settlement Administrator proposes that he be vested with the authority to distribute this money in his discretion at the conclusion of the claims process. The amount of this money will then be known, and the Settlement Administrator will be able to fashion a plan for the distribution of this remaining money.

E. The Court Should Release the 10% Remainder of Attorney's Fees Previously Withheld by the Court

In its Order granting in part Class Counsel's motion for attorney's fees, the Court ordered that 10% of the attorney's fees awarded should be withheld until the post-distribution accounting had been filed. ECF No. 6337 ¶ 6. Since then, IPPs Counsel has continued to devote full attention to this case, including claims processing. Accordingly, IPPs Counsel request that the 10% holdback be released at this time.

Upon approval of this motion, the Settlement Administrator will immediately begin the distribution process. The vast majority of the Net Settlement Fund will be distributed to claimants within a matter of months. However, there are always issues in cases such as this, involving a large number of individual claimants and large claimants represented by third parties, which can prolong the final distribution of all funds. As noted by the Claims Administrator, there will also be follow-up distributions to claimants and likely a second-round distribution of funds not originally claimed. This process will take at least a year, *see* Fisher Decl. ¶ 30, and is wholly beyond the control of IPPs Counsel.

IPPs Counsel has every incentive to conclude this distribution as soon as possible. IPPs Counsel continues to spend time and incur expenses during the distribution process. They want to finalize this process as soon as possible and will do so.

For the foregoing reasons, IPPs Counsel request that the Court release the 10% remainder

of the attorney's fees at this time.

IV. CONCLUSION

IPPs respectfully request that the Court grant this motion and enter an Order: (1) authorizing payment of all claims based on the CRT Weighted Units approved by the Settlement Administrator and according to the Court-approved pro rata Plan of Distribution, as set forth in Exhibit B to the Fisher Declaration; (2) adopting the Settlement Administrator's and Lead Counsel's recommendation regarding Late Claims; (3) authorizing payment of the Settlement Administrator's unpaid fees and expenses and authorizing the reserve for future expenses; (4) adopting the Settlement Administrator's proposal for distribution of residual funds; and (5) releasing the 10% remainder of attorney's fees previously withheld by the Court.

Dated: July 19, 2024

s/ Mario N. Alioto

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CERTIFICATE OF SERVICE

I, Robert J. Gralewski, Jr., certify that on July 19, 2024 the foregoing document entitled **INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING DISTRIBUTION OF SETTLEMENT FUNDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** was filed electronically in the Court's ECF; thereby upon completion the ECF system automatically generated a "Notice of Electronic Filing" as service through CM/ECF to registered e-mail addresses of parties of record in this case.

s/ Robert J. Gralewski, Jr.

Robert J. Gralewski, Jr.